



3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

15 CFR Part 90

[Docket Number: 221116-0242]

RIN 0607-AA57

Resumption of the Population Estimates Challenge Program

AGENCY: Census Bureau, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) is resuming the Population Estimates Challenge Program to provide eligible governmental units the opportunity to file requests for the review of population estimates for 2021 and subsequent years in forthcoming estimates series, beginning with the Vintage 2022 series that is scheduled to be published in 2023. This document lifts the stay of the Population Estimates Challenge Program regulations. This document does not implement revisions to the program or its requirements. The Census Bureau has published a proposed rule elsewhere in this issue of the **Federal Register** announcing the program's current requirements and soliciting comments about how the program might be improved.

DATES: Effective on November 22, 2022.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amel Toukabri, Chief, Local Government Estimates and Migration Processing Branch, 301-763-2461, and *POP.Challenge@census.gov*.

SUPPLEMENTARY INFORMATION: The Census Bureau typically prepares, in most years between decennial censuses, statistical estimates of the number of people residing in states and

their governmental units. Under 15 CFR part 90, “Procedure for Challenging Population Estimates,” the Census Bureau generally provides general-purpose governmental units the opportunity to seek a review of these estimates by providing additional data to the Census Bureau’s Population Estimates Program as evidence relating to the accuracy of the estimates. In most years, a general-purpose governmental unit may file a challenge to its population estimate any time up to 90 days after the release of the estimate by the Census Bureau on its website. The Census Bureau, upon receipt of appropriate documentation to support the challenge, will attempt to resolve the discrepancy with the governmental unit in a timely manner.

With this publication, the Census Bureau provides notice that it is now resuming the Population Estimates Challenge Program to provide eligible governmental units the opportunity to challenge population estimates for 2021 and subsequent years in forthcoming estimates series, beginning with the Vintage 2022 series that is scheduled to be published in 2023.

Previously, the Census Bureau published a final rule on January 9, 2020, in the *Federal Register* (85 FR 1100) to announce that it would temporarily suspend the Population Estimates Challenge Program to accommodate the taking of the 2020 Census. This suspension ensured that the Bureau could allocate sufficient resources to conduct and complete the 2020 decennial census, including time for the Census Bureau’s Population Division staff to effectively review and evaluate the 2020 Census results, and to assist with other important post-Census activities, including the development of the 2020 Demographic Analysis estimates of net coverage error and expediting the dissemination of the Vintage 2020 estimates products for use as a benchmark in 2020 Census evaluations.

The Census Bureau has previously suspended the Population Estimates Challenge Program around the time of other censuses, and the program is typically resumed when staff

assigned to decennial census-related work complete those assignments and become available to reinstate and support the operation of the Population Estimates Challenge Program. For example, the Population Estimates Challenge Program was suspended in 2010 in support of work pertaining to the 2010 Census and then resumed in 2013.¹

The Census Bureau had planned to resume the Population Estimates Challenge Program in 2022; however, those efforts were delayed as a result of significant and unexpected changes to the operational schedule for the 2020 Census, which were primarily caused by the effects of the COVID-19 pandemic and related mitigation measures.² Most notably, 2020 Census field operations were interrupted and delayed due to lockdown orders and health concerns which prevented data collection activities from proceeding on their original schedule. For example, the Nonresponse Followup Operation was originally scheduled for May 13, 2020, to July 31, 2020, but the actual dates for the operation were July 16, 2020, to October 15, 2020.

The Population Estimates Program depends on the decennial census data to serve as the starting point (or estimates base) for each new decade of annual population estimates. The schedule changes described above translated into significant and unexpected delays for processing of the 2020 Census data and the subsequent availability of data files required to research and develop the April 1, 2020 estimates base for the 2021 estimates series known as “Vintage 2021.” These files only became available for use by the Population Estimates Program on June 24, 2021, instead of the originally projected date of January 25, 2021. The resulting work leveraging these files to develop population estimates for subcounty geographies was completed on April 7, 2022, instead of the originally projected completion in early fall 2021. The

¹ Resumption of the Population Estimates Program, 78 FR 255 (January 3, 2013) (to be effective on February 4, 2013). <https://www.federalregister.gov/d/2012-31598>.

² <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/operational-adjustments.html>.

methodology that is used to create the estimates informs what components of the estimates are subject to challenge. As a result, the supporting materials for the Population Estimates Challenge Program, such as the Review Guide for the Population Estimates Challenge Program, could not be finalized until the method to develop the estimates of population for subcounty geographies had been completed to ensure that the materials made available feature current methodologies and input data requirements. Once it became clear that the amount of time remaining to reinstate the Population Estimates Challenge Program for the Vintage 2021 estimates series was insufficient, the timeline for resuming the program was updated on the Census Bureau's website, in February 2022.³

The Census Bureau will resume accepting challenges to the population estimates as of November 22, 2022. At that time, states, counties, and other units of general-purpose government may initiate challenges to population estimates under the procedures set forth in 15 CFR part 90. The Census Bureau will accept challenges to the estimates for 2021 and subsequent years in forthcoming estimates series, beginning with the Vintage 2022 series that is scheduled to be published in March and May of 2023. Challenges to previous estimates series will not be accepted. *See* 15 CFR 90.6(a) ("A request for a challenge to a population estimate may be filed any time up to 90 days after the release of the estimate by the Census Bureau."). Although the Census Bureau has the discretion to accept untimely requests in certain circumstances, *see id.* § 90.6(b), this is not an appropriate circumstance to exercise such discretion, given the need to prioritize the agency's limited resources to prepare the forthcoming 2022 estimates, and to ensure that sufficient resources and program materials are available to support the operation of the Challenge Program and the evaluation of future challenges received.

³ <https://www.census.gov/programs-surveys/popest/about/challenge-program.html>.

Classification

Executive Order 12866: It has been determined that this rule is not significant for purposes of E.O. 12866.

Executive Order 13132: It has been determined that this rule does not contain policies with federalism implications as that term is defined in EO 13132.

Administrative Procedure Act:

The provisions of the Administrative Procedure Act (APA) requiring prior notice and opportunity for public comment are inapplicable under 5 U.S.C. 553(b)(B) because prior notice and opportunity for public comment is impracticable, unnecessary, and contrary to the public interest, given the agency's desire and ability to restart this program after an extended period of suspension to accommodate the decennial census and COVID-19-related delays. The Population Estimates Challenge Program is routinely suspended during decennial census operations in order to ensure that resources within the Population Division are allocated toward reviewing and evaluating the decennial census results. This rule only resumes the suspended program. This rule does not implement revisions to the program or its requirements. Furthermore, there is good cause to waive the thirty-day delay in effective date pursuant to 5 U.S.C. 553(d)(3), as this rule does not burden any regulated entity, including state and local governments such as county, city, town, or village. Moreover, allowing an additional thirty days before challenges is not practicable since entities have expected the return of the Population Estimates Challenge Program.

Regulatory Flexibility Act:

Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

Robert L. Santos, Director, Census Bureau, approved the publication of this rule in the Federal Register.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure, Census data, State and local governments.

PART 90—PROCEDURE FOR CHALLENGING POPULATION ESTIMATES

For the reason stated in the preamble, and under the authority of 13 U.S.C. 4 and 181, the stay of 15 CFR part 90 is lifted effective November 22, 2022.

Dated: November 17, 2022.

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U.S. Census Bureau.

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